

### **Remarks**

By the present response, Applicant has amended Claim 17 to further clarify the invention. Claims 1-48 remain pending in the present application. Applicants respectfully request reconsideration and withdrawal of all rejections presented in the Final Office Action, in light of the Amendments and Remarks presented herein.

#### **Claims 1, 17 and 43 Are Definite**

Claims 1, 17 and 42 were rejected under 35 USC 112 as indefinite. Applicants respectfully traverse. Regarding the Section 112 rejection of Claim 17, appropriate correction has been made to Claim 17 to overcome the improper antecedent basis contained therein. Applicants thank the Examiner for pointing out such error. Reconsideration and withdrawal of the rejection to Claim 17 is respectfully requested.

Regarding the other concerns of the Office Action under Section 112, Applicants respectfully disagree. It is submitted that the Office has misinterpreted or misread the claims. Claims 1, 17 and 43 do not recite “one treatment” as asserted by the Office. Instead the claim recites “at least one treatment,” which means that the treatments can be a plurality of treatments. Since the claim says that the “at least one treatment comprises a plurality of different treatments,” it is submitted that these phrases of Claims 1, 17 and 42 are definite. The other objections under Section 112 explained in the Office Action should be overcome once the above misinterpretation is rectified. Applicants submit that a plurality of treatments can be applied to a plurality of different treatments. Applicants are unsure as to the confusion of these elements and encourages the Examiner to call the undersigned attorney to discuss any possible further issues.

Given the above, Applicants submits that Claims 1, 17 and 42 are definite and reconsideration of the Section 112 rejection is requested.

#### **Claims 1-23 and 15-48 is Patentably Over Louviere Under 35 U.S.C. § 102**

Claims 1-23 were rejected as unpatentable over Louviere under 35 USC 103. Applicants respectfully traverse this rejection and submit that these claims patentably define over Louviere.

This is especially true given the that the Office must give patentable weight to a “plurality of treatments” and a “plurality of different channels,” as recited in the claims. Below is Applicants arguments as to why Louviere does not teach or suggest the elements of the present claims.

Louviere is directed to online experimentations of presenting various content arrangements on webpages. Louviere states (emphasis added):

“ . . . systems 10 and 12 may be maintained, managed, and/or operated by a provider 14 of content 15 to user 16. Such content provider can be an entity which operates or maintained a portal or any other website through which content can be delivered.” (See Louviere, column 4, lines 35-39, emphasis added)

“Content 15, which can be stored in digital form, may be broken down or reduced to a set of elemental components. An elemental component can be, for example, a text file, an image file, an audio file, a video file, etc. These elemental components may be combined and/or formatted in a number of different ways or structures for presenting content 15 to users 16.

Each separate combination and/or formatting of content 15 constitutes a content structure or treatment. A content structure can be, for example, a particular implementation of a web page at a given moment. More specifically, at the given instance of time, the web page may contain particular text, icons, images, and/or video located at particular positions on the screen, particular visual background shading or color, particular borders for dividing up the screen, particular audio (music or speech), and the like. ” (See Louviere, column 5, lines 9-25)

Accordingly, Louviere only discloses combining and/or formatting elemental components on webpages for presenting content (via different ways/combinations) to users on a webpage (e.g., at the given instance of time, the web page may contain particular text, icons, images, and/or video located at particular positions on the screen, particular visual background shading or color, particular borders for dividing up the screen, particular audio (music or speech)).

In contrast, Claim 1 recites

A method to apply different treatments, comprising:  
defining at least one treatment, wherein the at least one treatment comprises a plurality of different treatments, each of the plurality of different treatments being different from each other;

selecting at least one channel, wherein the at least one channel comprises a plurality of different channels, each of the plurality of different channels being different from each other, and wherein each of the at least channel comprises a specific medium of communication, at least one medium of communication comprising a non-webpage medium; and

applying the plurality of different treatments to the plurality of different selected channels such that each different selected channel has a different treatment applied thereto and associated therewith so as to evaluate the impact that each different treatment has to each different, selected channel.

Louviere does not disclose the above recitations of Claim 1. For example, Louviere does not disclose “applying the plurality of different treatments to the plurality of different selected channels such that each different selected channel has a different treatment applied thereto and associated therewith so as to evaluate the impact that each different treatment has to each different, selected channel.” As previously discussed, Louviere only deals with varying content only on webpages. Louviere clearly does not disclose applying different treatments to different channels (e.g., emails, postal mailings, on-hold telephone messages, ATM messages, etc.). Further, Louviere does not disclose “selecting at least one channel . . . .” There is no selection process at all in Louviere.

Additionally, the Office correctly acknowledges that Louviere does not teach or disclose “wherein the at least one treatment comprises a plurality of different treatments, each of the plurality of different treatments being different from each other,” as recited in Claim 1. The Examiner appears to use Official Notice by stating that one skilled in the art would know to modify Louviere to include different channels comprising non-webpage mediums. Applicants respectfully disagree. One skilled in the art would not have looked to modify Louviere to include a plurality of different treatments, each of the plurality of different treatments being different from each other. Use of facts beyond what is expressly shown in the prior art must be limited to those which are “capable of such instant and unquestionable demonstration as to defy dispute.” M.P.E.P. § 2144.03(A). The Office is required to cite the best possible art to support his contention. M.P.E.P. 2144.03(C).

As such, it is respectfully submitted that Claim 1 patentably distinguishes over Louviere.

Claims 17, 24 and 43 are independent claims that contain recitations similar to that of Claim 1 and are allowable for the same reasons that Claim 1 is allowable. Claims 2-16, 18-23, 25-42, and 44-48 are dependent from one of the above independent claims and are allowable for the same reason each base independent claim is allowable. Reconsideration and withdrawal of the 35 U.S.C. § 102 rejection of Claims 1-11 and 15-48 is respectfully requested. Additionally, these claim recite additional content not taught or suggested by Louviere. For example, the Office Action acknowledges that Louviere does not disclose “validating a new matrix,” as recited in Claims 12-14. However, the Office Action asserts in a conclusatory fashion that the recitations of Claim 12 “would have been obvious to one of ordinary skill in the art at the time of the invention to modify Louviere to include validating.” Use of facts beyond what is expressly shown in the prior art must be limited to those which are “capable of such instant and unquestionable demonstration as to defy dispute.” M.P.E.P. § 2144.03(A). Claim 12 is directed to a specific, detailed feature of some embodiments of the invention of validating a new matrix. Neither Louviere nor any cited art discuss or even suggest a matrix, much less validating a new matrix. This concept is also not obvious to one skilled in the art. It is impossible to demonstrate this concept instantly and unquestionably without citing any art that teaches it. The Office is required to cite the best possible art to support his contention. M.P.E.P. 2144.03(C).

In light of the above is submitted that Claims 12-14 patentably define over Louviere, and reconsideration and withdrawal of the 35 U.S.C. § 103 rejection of these claims is respectfully requested.

**Applicants respectfully request the Examiner to call the undersigned if the Examiner has any suggested amendments will further this case closer to allowance.**

\* \* \* \* \*

**Conclusion**

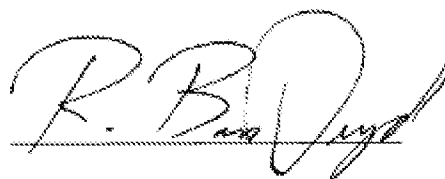
In view of the foregoing Amendments and Remarks, Applicants respectfully submit that all claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. Examiner Brandenburg is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 13-4365.

Respectfully submitted,

Date: 8/11/10

By: \_\_\_\_\_



R. Brian Drozd  
Reg. No. 55,130

**Customer No. 69603**  
**Moore & Van Allen, PLLC**  
P.O. Box 13706  
Research Triangle Park, NC 27709  
Telephone: (919) 286-8140  
Facsimile: (919) 286-8199

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